UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,852	07/31/2003	Jonnie R. Williams	004859.00044	1976

22907 7590 02/21/2007

BANNER & WITCOFF, LTD.
1100 13th STREET, N.W.
SUITE 1200
WASHINGTON, DC 20005-4051

EXAMINER	
EDEL, JOHN B	
ART UNIT	PAPER NUMBER
1731	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/630,852	WILLIAMS, JONNIE R.	
	Examiner	Art Unit	
	John B. Edel	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The rejection under 35 USC § 112 relating to the term "bit" has been withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 5,9,10,12-14,16,20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofman (US. Pat. No. 6,135,120) in view of Dusek et al (US. Pat. No. 4,606,357).

Lofman discloses compressed snuff portions (corresponding to the claimed "solid bit of powdered tobacco"). While Lofman may not specifically state that the snuff comprises added flavoring which comprises the claimed weight percentage of peppermint, menthol and/or wintergreen/spearmint, it would have been obvious to one having ordinary skill in the art at the time of the invention to have added the flavorants since these flavors are conventionally used in manufacturing snuff, as is evidenced by the Dusek et al reference (See col. 4, line 65-66). One having ordinary skill in the art

would have arrived at the claims percentages, after routine experimentation, in order to optimize the flavor content of the snuff to provide the user with a pleasing taste.

Regarding claims 9 and 20, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided tobacco which is of the Virginia flue-cured variety since such is a common type of tobacco used in tobacco-based articles.

Claims 6-8, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lofman (US. Pat. No. 6,135,120) in view of Dusek et al (US. Pat. No. 4,606,357), further in view of WO 00/15056.

While Lofman modified by Dusek et al may not specifically disclose that the powdered tobacco comprising its snuff product has the claimed nitrosamine content, WO 00/15056 discloses a tobacco product, comprised from Virginia flue-cured tobacco leaves, which can be converted to a smokeless tobacco product which has a combined TSNA (corresponding to the claimed "collective content of NNN, NNK, NAT, NAB') as low as less than about .009 micro g/g (corresponding to the claimed "0.3/0.2/0.1 micro g/g or less") (see pages 28 and 29). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the tobacco-based (smokeless) product of Lofman modified by Dusek et al with the nitrosamine content disclosed in WO 00/15056, in order to provide a less-carcinogenic tobacco product as taught in WO 00/15056.

Response to Arguments

Applicant's arguments filed November 16, 2006 not previously addressed have been fully considered but they are not persuasive. Applicants arguments relating to there not being substantial evidence and all elements not being present in the combination are not persuasive in light of the obviousness of optimizing flavor content to amounts within the claimed ranges. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). Dusek additionally suggests "mixtures thereof" (col. 4 lines 60-68), showing that the combinations of flavors is taught in the prior art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Edel whose telephone number is 571-272-4804. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

JBE